

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

RUDOLPH W. GIULIANI,	Main Case No.
Debtor.	23-12055-shl

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United States Bankruptcy Court  
One Bowling Green  
New York, New York

January 19, 2024  
11:14 AM

B E F O R E:  
HON. SEAN H. LANE  
U.S. BANKRUPTCY JUDGE

ECRO: ANA VARGAS

Doc. #25 Debtor's Motion For An Order Modifying The Stay For  
The Limited Purpose Of Allowing The Debtor To File Post-Trial  
Motions To Modify The Judgment And For A New Trial And To File  
A Notice Of Appeal

Doc. #28 Order Scheduling Emergency Hearing On Debtors  
Application For Order Authorizing Modification Of The Stay For  
Purposes Of Post Judgment Motions And Appeals

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14 KENNETH J. COX (ZOOM)

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1 P R O C E E D I N G S

2 THE COURT: Good morning. Please be seated.

3 MR. FISCHOFF: Good morning.

4 THE COURT: We are here this morning -- oh, let me  
5 just turn on my microphone for the folks who are on Zoom.

6 Good morning. My name is Judge Sean Lane, and we're  
7 here in the United States Bankruptcy Court for the Southern  
8 District of New York for hearing in this Chapter 11 case of  
9 Rudolph W. Giuliani and more particularly, on the debtor's  
10 motion seeking to modify the automatic stay.

11 So we'll start, as we always do, by getting  
12 appearances. And we'll start with the folks here in the  
13 courtroom, and then we'll circle the virtual room of Zoom. So  
14 we'll start on this side of the room.

15 MR. FISCHOFF: Good morning, Your Honor. Berger,  
16 Fischoff, Shumer, Wexler & Goodman by Gary Fischoff on behalf  
17 of the debtor.

18 MR. BERGER: Good morning, Your Honor. Heath Berger,  
19 Berger, Fischoff, Shumer, Wexler & Goodman, attorney for the  
20 debtor.

21 THE COURT: All right. Good morning.

22 MS. STRICKLAND: Good morning, Your Honor. Rachel  
23 Strickland, Willkie Farr & Gallagher, on behalf of Ruby Freeman  
24 and Shaye Moss.

25 MR. BURBAGE: Good morning, Your Honor. James

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1 Burbage, Willkie Farr & Gallagher.

2 MR. NATHAN: Aaron Nathan, Willkie Farr & Gallagher.

3 MR. QURESHI: Good morning, Your Honor. Abid Qureshi,  
4 Akin Gump Strauss Hauer & Feld. We are proposed counsel to the  
5 official committee of unsecured creditors. With me in the  
6 courtroom is my partner Ira Dizengoff, Amelia Danovich, and on  
7 the phone, my partner Phil Dublin.

8 THE COURT: All right. Good morning to you all.

9 MS. WELLS: Good morning, Your Honor. For the record,  
10 Annie Wells on behalf of the United States Trustee. And I  
11 believe I see my colleague Ms. Andrea Schwartz, and she will be  
12 taking the lead today.

13 THE COURT: All right. Good morning.

14 Anyone else here in the courtroom?

15 All right. We'll turn it over to appearances for  
16 Zoom. And we'll start with Ms. Schwartz, who I know is -- a  
17 helpful segue by Ms. Wells. So let me get that appearance.

18 MS. SCHWARTZ: Thank you. Good morning, Your Honor.  
19 Andrea Schwartz for the U.S. Trustee.

20 THE COURT: Good morning.

21 And on behalf of the official committee of unsecured  
22 creditors.

23 MR. DUBLIN: Good morning. Phil Dublin, Akin.

24 THE COURT: All right. Good morning.

25 As is often the circumstance with large cases of

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1 interest, there are many, many pages of appearances. I don't  
2 go through them all, as that's not efficient. So at this  
3 point, I will throw it open to anyone else who has not yet made  
4 appearance who'd like to do so, with the understanding that for  
5 somebody who doesn't anticipate speaking and does, they can  
6 always identify themselves later on in the proceeding.

7 But anyone else who needs to make an appearance at  
8 this time?

9 MR. RATTET: Robert Rattet for Davidoff Hutcher &  
10 Citron and for Robert Costello.

11 THE COURT: All right. Good morning.

12 Anyone else?

13 MR. SAMUELS: Good morning, Your Honor. Joel Samuels  
14 of the Buchalter firm on behalf of Dominion.

15 THE COURT: Good morning.

16 Anyone else? All right.

17 MR. BROGAN: Good morning, Your Honor. Daniel Brogan,  
18 Benesch, Friedlander, on behalf of Smartmatic.

19 THE COURT: All right. Good morning.

20 Anyone else?

21 All right. As you all have no doubt surmised, today  
22 is a hybrid hearing. The court is back open. Today's not an  
23 evidentiary hearing, which we always do in person. We're back  
24 to the old days. Thank goodness. All of us. But we are fully  
25 hybrid.

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1           The one thing I will say, there are different kinds of  
2 microphones here in the courtroom. These microphones that are  
3 the longneck ones are ones that amplify the sound in this room.  
4 But unbeknownst to any of you, without an explanation, these  
5 are the ones that pick up the sound for Zoom. So just make  
6 sure you're within hailing distance of those so that everybody  
7 who is on Zoom can hear you. And obviously, if anybody is  
8 having trouble hearing on Zoom, I can't promise a solution, but  
9 we can certainly do the best we can to address the problem.

10           And with that, we are here for the motion to lift  
11 stay. I have read the papers. I have read the oppositions. I  
12 think it's worth noting, this matter was originally requested  
13 to be put on shortened notice for the 12th. It was put on  
14 shortened notice at that time. It was noted that given the  
15 shortened time, anybody could file anything without a deadline  
16 and can even show up at the hearing and make themselves be  
17 heard without previously filing papers.

18           It got adjourned for another week, which essentially  
19 puts it on regular notice. I did get pleadings yesterday in  
20 opposition. I was in hearing most of yesterday but did make  
21 sure to read everything. I confess, I have not read all the  
22 exhibits. I know there were voluminous, and I didn't have a  
23 hard copy of those. But I have gotten through everything, so  
24 just to let you know where I stand in terms of the state of  
25 play for the motion.

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1           So with that, as it is the debtor's motion, I'll start  
2 off with the debtor and hear from you first.

3           MR. FISCHOFF: Good morning, Your Honor. So it is the  
4 debtor's motion, and the debtor is seeking -- and by the way,  
5 we have not had a court status conference yet. Would the Court  
6 want me to advise of a little bit of status? I can, or go  
7 right --

8           THE COURT: I think a status on the case is helpful.  
9 I think, as you can tell from the objections that were filed,  
10 there are a lot of questions that a lot of interested parties  
11 have, rightly so, about the case and where things are going.  
12 So a status would be helpful.

13           MR. FISCHOFF: Okay. So this case was filed on  
14 December 21st, 2023. And it was filed -- it was precipitated  
15 by the entry the prior day by Judge Howell in the Federal  
16 District Court for the District of Columbia, where the court  
17 entered an order authorizing the Freeman plaintiffs to enter  
18 and force their judgment on an expedited basis. So while the  
19 debtor had been reviewing options, the entry of that judgment  
20 on -- of that order late on December 20th accelerated the  
21 debtor's thinking, and this petition was filed the next  
22 afternoon.

23           Now, ideally, as attorneys for the debtor, we would  
24 have liked additional lead time to prepare and get everything  
25 assembled. So we're now in the process of getting the

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1 schedules prepared and filed. We're getting the retentions in  
2 place. But the debtor has counsel who has been representing  
3 him in both the Freeman matter and some other matters pre-  
4 petition, and we're working on getting those retentions  
5 straight with the U.S. Trustee so they can continue with the  
6 retention going forward. But since there's a history of  
7 payment, we need to get those details. So we're a little bit  
8 behind the eight ball, but we hope by next week it'll be  
9 straightened out.

10 I can tell you that the debtor's schedules -- and  
11 there's obviously a lot of press about this case. So the  
12 debtor's schedules are going to indicate no surprises. The  
13 debtor owns two pieces of real estate, has some exempt IRAs,  
14 and he's trying to earn a living with his radio and podcast  
15 show. So there's no pot of gold at the end of the rainbow, and  
16 the debtor is going to give full and complete disclosure.

17 The debtor doesn't have an intention of dismissing  
18 this Chapter 11 by somehow, as it may have been stated in some  
19 papers, using this bankruptcy as a sword and then maybe  
20 dismissing it later. The debtor has needs for this  
21 reorganization, not only because of the judgment of  
22 approximately 148 million by the Freeman parties against him,  
23 which obviously, the potential immediate enforcement of that  
24 was the precipitating cause, but he has other financial issues.  
25 He's currently suspended from the practice of law, so he can't

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1 earn any income right now as a lawyer. So his income is  
2 limited. And he has some obligations that have to be dealt  
3 with, and we intend to deal with it.

4 Now, as far as this motion goes, there was a deadline  
5 to either file motions to address the judgment, either to  
6 vacate the verdict or to modify the verdict and/or to file a  
7 notice of appeal. The outcome of whatever the status of that  
8 finding might be is important to the debtor's estate and the  
9 debtor's creditors. 148 million swamps the creditor body. And  
10 whether that's dischargeable or not is something the Court will  
11 ultimately decide down the road.

12 But right now, it's important for the debtor to  
13 preserve and exercise its rights to address that verdict with  
14 the post-verdict motions and/or if necessary, at the conclusion  
15 of those motions, to file the appropriate notices of appeal.  
16 The sooner the debtor processes those post-judgment motions,  
17 the sooner this case has a better indication of where it's  
18 headed. Now, I know --

19 THE COURT: So let me ask, and this sort of segues  
20 into the motion, what is it that the debtor actually wants to  
21 do? Because there's some discussion in -- I know the Freeman  
22 judgment creditors have -- they're okay with certain things,  
23 but what's clear from their objection is the notion that it's  
24 lifted so the debtor can do whatever the debtor wants is not a  
25 notion that they're comfortable with.



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1 And certainly, there is case law that says it's  
2 inappropriate to lift the stay to relitigate adjudicated  
3 issues, to just continually relitigate issues. And there  
4 certainly also is the backdrop of this case, where there's a  
5 concern about republicizing the statements that were the source  
6 of the litigation in Freeman. And so there are quite a few  
7 guardrails that the objectors are concerned about.

8 And so rather than thinking about this theoretically,  
9 the question is what does the debtor actually want to do.  
10 Right. Do you do this appeal. I certainly would understand,  
11 based on my prior life as a litigator, you file a motion for a  
12 new trial or to challenge something about what the district  
13 court has done, but you file it in the district court, that  
14 that would extend the time to file an appeal.

15 So perhaps it makes sense, rather than think about  
16 this theoretically in terms of carte blanche, but to think  
17 about it very specifically in terms of exactly what the debtor  
18 wants to do.

19 MR. FISCHOFF: Okay. So what the debtor wants to  
20 do -- and there is counsel, Joseph Sibley, who's a  
21 representative of the debtor in that matter, he intends to  
22 continue. We'll be filing retention papers for him. And by  
23 the way, it's not a drain on the estate because there are -- I  
24 know I'm getting off to the side for a minute, but I just want  
25 to address it. His fees have been paid by two legal defense

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1 funds and will continue to be paid by those legal defense  
2 funds. So it's not a drain on the debtor's assets, nor a drain  
3 on the creditors --

4 THE COURT: Although there was a concern raised in one  
5 of the papers about there's no disclaimer of the notion that  
6 those fees have paid. That way, there won't be a request to  
7 have the estate compensate for those fees if they're paid by  
8 another party. So is there anything you can tell me about  
9 that? In other words, if there's a representation those fees  
10 are going to be paid by somebody else, there's going to be no  
11 recourse against the estate for those fees that are going to be  
12 paid --

13 MR. FISCHOFF: Correct.

14 THE COURT: -- by that third-party.

15 MR. FISCHOFF: We'll be filing the appropriate Lar Dan  
16 affidavit, and I can even disclose who those funds are, if the  
17 Court requires, or we can wait until the retention papers are  
18 filed next week. But that was just an aside.

19 What the debtor wants to do, and this is based on  
20 discussions with counsel who's been representing the debtor in  
21 this matter -- I'm not litigation counsel in it, so I'm just  
22 passing on my knowledge from my discussions with him -- is he  
23 wants to file a motion either for a new trial or to modify the  
24 verdict because he believes the verdict on its face is  
25 unreasonable. And when we say --

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1 THE COURT: Well, let me ask you more specifically  
2 about that. I have gotten up to speed in the papers that have  
3 been filed about some of the history of the Freeman litigation.  
4 I obviously don't profess to be an expert or even have complete  
5 knowledge of all the basics, but I certainly have been given a  
6 lot of information that's helpful.

7 And one of the concerns that's been raised, one of the  
8 many concerns that have been raised, is what is it that's the  
9 focus of the requests. And that concern has been informed by  
10 the debtor's involvement or lack thereof in the Freeman  
11 litigation. Right. So there's a judgment that has a fairly, I  
12 guess, lack of a different adjective, colorful history leading  
13 up to it in terms of -- I'm sure the district judge wouldn't  
14 use that term, but dealing with discovery, lack of compliance,  
15 and various things and the judgment being entered as a result  
16 of the debtor's lack of involvement in certain activities that  
17 are traditional leading up to a trial. Then there's the  
18 damages phase.

19 So I'm trying to get a sense, and I think it would be  
20 helpful for all parties to get a sense, of exactly what it is  
21 that is requested to be done here. The motion itself that I  
22 received is exceedingly brief. It's fairly pro forma. I think  
23 it's probably five pages of content. One page is the double-  
24 spaced recitation of the Sonnax factors that are relevant in  
25 these kinds of motions. And there's only really two paragraphs

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1 about what it is that -- how those apply or what what's going  
2 to happen and what the debtor wants to do.

3 And obviously, there's been a lot of litigation, so as  
4 expected -- and probably you anticipated it; certainly I  
5 anticipated it -- a lot of parties have weighed in. So a lot  
6 of the concerns are heightened by the fact that people don't  
7 know what it is that the debtor wants to do, and that really  
8 affects how you look at the motion and how you analyze what  
9 should happen, whether the motion should be granted.

10 MR. FISCHOFF: Understood. So the debtor believes the  
11 dollar amount of the damages in its face is unreasonable and  
12 should be readdressed by the Court, and that would be the  
13 motion that the debtor would be seeking to file, whether it's  
14 called to vacate the verdict in the dollar amount or to modify  
15 the verdict.

16 THE COURT: So it's a damages-only motion?

17 MR. FISCHOFF: Yes, Judge.

18 THE COURT: All right. My understanding is that the  
19 debtor didn't present any witnesses in the damages phase. So  
20 that's another concern that I think has been raised by the  
21 parties about what is it that the debtor is going to seek now  
22 in light of the fact that the debtor had an opportunity and  
23 chose not to present any witnesses. How are we to understand  
24 what's going on here in light of that?

25 MR. FISCHOFF: Okay. Well, I'm not the litigation

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1 counsel in that case, but my understanding is that they want to  
2 address the calculation of damages because they think the  
3 amount alone establishes that they're punitive and grossly  
4 unrelated to the actual damages. So and then upon addressing  
5 that, they will have created a record for the appeal because if  
6 that motion is denied, then their right to appeal arises and  
7 they'll appeal it.

8 And I think it's important that the debtor be allowed  
9 to do that in order to find out is this a real 148 million that  
10 has to be dealt with in this Chapter 11, or is it some other  
11 number that might be redetermined. As I said, we're not  
12 looking to litigate the merits, only to the extent that they  
13 affect the damages. But agreed, the liability portion was  
14 entered without testimony, and I don't think that's subject to  
15 challenge at this.

16 THE COURT: So again, I'm not familiar enough with the  
17 Freeman litigation to understand the exact scope of what  
18 happened or didn't happen in the damages phase and what the  
19 extent to which, if any, the debtor availed himself of his  
20 opportunities to present evidence and be heard. That's for  
21 something that obviously the district court and the parties in  
22 that case to address.

23 The other or one other issue that's been identified  
24 relates specifically to the stipulation that was filed in that  
25 case and the language used in terms of the conduct. And that's

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1 raised in the context of dischargeability, and as we all know,  
2 the Bankruptcy Code provides for certain kinds of debts to be  
3 nondischargeable. There are many different categories of debts  
4 and many different standards within the statute. But here, the  
5 as one of the objections notes, that Section 523(a)(6) of the  
6 Bankruptcy Code is one of those provisions, and the objectors  
7 point out that the language that was agreed upon by the debtor  
8 tracks, in the objector's view, the language in the statute.

9 And it gets to the very legitimate question of is  
10 nondischargeability already been conceded. Again, it's not an  
11 issue in front of me today. I'm raising the arguments and  
12 concerns that have been raised to me. But that, I think, is a  
13 legitimate question in the sense of what is appropriate to  
14 spend money of the estate on. You said there's no pot of gold  
15 at the end of the rainbow, so there's limited estate resources.  
16 So the point is that in making Sonnax findings and findings of  
17 cause for lifting the stay, these are the kinds of issues to,  
18 to grapple with.

19 So as that issue has been raised -- and again, I  
20 mentioned the language used in the Freeman litigation in the  
21 joint stipulation regarding entry of final judgment because  
22 that's what the parties raised, and that says to me that they  
23 have a very legitimate basis for raising the issue and the  
24 concern. So what can you tell me about that?

25 MR. FISCHOFF: Well, I think that's why it's important

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1 to allow the debtor to pursue these post-verdict motions in  
2 order to find out the exact amount that may or may not be  
3 dischargeable. I think today, it's premature. I know in the  
4 opposition they said, well, we should determine  
5 dischargeability first. And I think it should be the other  
6 way. We should know what we're talking about as to what may or  
7 may not be dischargeable, and then we could --

8 THE COURT: Well, for that verdict, the argument  
9 really is that that's the amount of what the Freeman judgment  
10 plaintiffs say. That's a question of what amount is  
11 nondischargeable. But that the finding itself, and they cite  
12 to the docket 138 saying what the language is in the joint  
13 stipulation regarding entry of final judgment, that Defendant  
14 Giuliani engaged in extreme and outrageous conduct, which  
15 intentionally and maliciously caused the plaintiffs to suffer  
16 emotional distress. And it goes on to, "defendant's conduct  
17 was intentional malicious, one, and willful". And again  
18 references the statute, the bankruptcy statute, that uses the  
19 terms willful and malicious.

20 So the idea is if, again, the argument's made -- and  
21 it's not a frivolous argument; it's a legitimate question --  
22 whether there's a point to this. If it's nondischargeable,  
23 it's going to pass outside of bankruptcy anyway. And so I  
24 don't know what it would mean in terms of exactly the ordering  
25 of what things should happen in this case, but it's a

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1 legitimate question.

2 So what, if anything, views do you have as to this  
3 joint stipulation and the nondischargeability question?

4 MR. FISCHOFF: Well, I think that in order for the  
5 Court to make a determination under 523, it would have to have  
6 before it if the question presented appropriately in an  
7 adversary proceeding, and after that adversary proceeding is  
8 commenced, then the Court can address whether or not that  
9 particular stipulation is binding on the debtor and meets all  
10 the appropriate elements to sustain a nondischargeability  
11 complaint. But I understand the Court's interest in that. But  
12 it's not before the Court today, and I think it's --

13 THE COURT: I understand, but I guess I think what I'm  
14 hearing from the objectors is that they're trying to get a  
15 sense of what the preview is. Is there a -- and again, they  
16 can speak for themselves when they stand up, that in their  
17 view, there's nothing to talk about. And so they're trying to  
18 get a sense of, well, if you're going to challenge that, what  
19 are you actually going to say, and if you have nothing to say,  
20 Judge, why should we be spending money on this litigation.

21 MR. FISCHOFF: We know it's an issue. We're all  
22 bankruptcy professionals here, so we know that's an issue.  
23 Maybe it's the elephant in the room, but I'm not prepared to  
24 concede such an issue at this point.

25 THE COURT: All right. So what other things do you



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1 want to tell me in connection with the motion that you filed?

2 MR. FISCHOFF: Well, I think you've addressed kind of  
3 a summary of all the issues. I could go through -- I mean, the  
4 Court's now aware of all the facts. You're aware of -- the  
5 Court's intention -- I know the papers by both the creditors  
6 committee and the Freeman plaintiffs have raised the issue  
7 about that the debtor is using the bankruptcy stay to avoid  
8 posting a bond. But we know, in April of 1988, the seventh-  
9 largest oil company in America filed Chapter 11 in this --  
10 well, not this building, but in the White Plains division,  
11 because they could not post a bond when Pennzoil had about a  
12 nine-billion-dollar judgment against them --

13 THE COURT: No, we're aware of --

14 MR. FISCHOFF: -- which was real money then. Yeah.

15 THE COURT: -- the Texaco case, and I've had Texaco  
16 cases, so to speak, that are filed because of a judgment. And  
17 I think the authority is that that doesn't necessarily -- it  
18 comes up in the context, as I understand it, of people arguing  
19 whether a filing is a bad-faith filing or not. I don't have  
20 that issue in front of me. I don't have such a motion, so I  
21 don't need to address that. I think what those cases stand for  
22 are the fact that, as a theoretical matter, a judgment that  
23 motivates a bankruptcy is not in and of itself necessarily  
24 dictate that it's a bad-faith filing. I think courts look at  
25 the facts and circumstances of each case.

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1 MR. FISCHOFF: Okay. So I believe, then, we've -- I  
2 believe we've explained to the Court more clearly than in the  
3 papers the debtor's intentions and plans, and at this point,  
4 I'll defer to my colleagues and just reserve a few minutes if  
5 necessary when they've concluded.

6 THE COURT: All right. So with that --

7 MS. SCHWARTZ: Judge, before we get to the motion, can  
8 we just address the status for a moment?

9 THE COURT: Let me do this. Let me hear from parties  
10 in terms of their issues because I think status bleeds into the  
11 motion, as I think we've already discovered. So let me hear  
12 from everybody here in the courtroom, and then I will make sure  
13 everybody gets a full chance to be heard.

14 MS. SCHWARTZ: Okay. Thank you, Your Honor.

15 THE COURT: Hybrid hearings are wonderful in theory.  
16 They can be a little bit more challenging in real life. But  
17 with that --

18 MS. SCHWARTZ: Thank you.

19 THE COURT: -- let me hear from the Freeman  
20 plaintiffs, and if there's another nomenclature you'd prefer  
21 that I use. I don't think judgment debtor is a good one since  
22 we have a bankruptcy debtor so --

23 MS. STRICKLAND: This is not going to work.

24 THE COURT: Feel free to do it from the table.

25 Whatever --

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1 MS. STRICKLAND: Okay.

2 THE COURT: -- works best for you.

3 MS. STRICKLAND: Great.

4 THE COURT: And just, exactly, make sure that your  
5 other microphone is handy.

6 MS. STRICKLAND: I'm not used to doing this sitting  
7 down.

8 THE COURT: Well, you can stand, sit.

9 MS. STRICKLAND: No, it's okay.

10 THE COURT: Whatever works.

11 MS. STRICKLAND: I got it. Good morning, Your Honor.  
12 For the record, Rachel Strickland of Willkie Farr & Gallagher.  
13 We are counsel to Ms. Ruby Freeman and Ms. Shaye Moss. My  
14 presentation is remarkably longer, but Your Honor has read a  
15 lot, and I can tell from the questions that much of this will  
16 not be new to you. So I would encourage you to cut me off or  
17 have me skip things as Your Honor sees fit.

18 THE COURT: Well, your papers are extensive. I've  
19 read them. I've marked them up. I have stickies. I have  
20 notes. So I don't need you to go through them all.

21 I guess I would say two things. One is to hit the  
22 highlights of points you think particularly resonate. And the  
23 second, and maybe we should start with the second, is in light  
24 of hearing what you've heard, I do note that you have language  
25 in your opposition about what your clients can live with and

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1 what they can't live with. And I'm interested in hearing your  
2 thoughts about the dividing line and the thinking behind that  
3 as to what makes sense and what you're most concerned about  
4 because it sounds like there's certain things you -- you, in  
5 fact, helpfully attached to a proposed form of order saying,  
6 well, Judge, here's what we could live with.

7 But obviously, this is where, as somebody who didn't  
8 participate in the Freeman litigation, I am not nearly as well  
9 informed as you all, and I never will be. So the thinking  
10 behind your dividing line and what's acceptable and what's not  
11 and why, it would be really helpful.

12 MS. STRICKLAND: Understood, Your Honor. Our clients  
13 are obviously the centerpiece of this case. I'm not aware of  
14 any other Chapter 11 case where the first hearing was convened  
15 solely for a debtor's motion to lift stay. The relief that Mr.  
16 Giuliani is seeking is even more unusual, since our claims are  
17 liquidated already and in all likelihood, as Your Honor noted,  
18 are nondischargeable.

19 Before I go through the merits and the dividing lines,  
20 I'd like to address two things. One, I want to propose a road  
21 map for the cases for Your Honor's consideration that we think  
22 will drive efficiency so that creditors who have been wronged  
23 by Mr. Giuliani can get compensated. And then second, I'd like  
24 to give you some background on our client's claims.

25 So for the road map, it will be no surprise that at

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1 the end of today, I'm going to ask Your Honor to deny Mr.  
2 Giuliani's stay relief motion. And then following that, if he  
3 doesn't seek to dismiss his own case, I suggest that Your Honor  
4 first consider the issue of whether my client's claims are  
5 nondischargeable. And from there, after parties kick the tires  
6 on the schedules and statements and investigate the extent of  
7 Mr. Giuliani's assets, it can be determined whether there's any  
8 prospect whatsoever for a plan of reorganization or emergence  
9 or whether this case is yet another diversion.

10 So for background on the claims, at the outset, I want  
11 to note that this is not about politics at all. My clients  
12 have liquidated a 148-million claim against Mr. Giuliani that  
13 Your Honor should think of as a self-inflicted wound. He said  
14 and did despicable things and then when he was sued, sat in  
15 court and did very, very little. He flouted district court  
16 orders. He deliberately ignored discovery requests. And he's  
17 not just some guy who was mayor. Mr. Giuliani was a Southern  
18 District of New York U.S. Attorney and a DOJ Associate Attorney  
19 General, a man literally in charge of the civil division. So  
20 he has made his bed here.

21 On Election Day, November 3rd, 2020, Ms. Freeman and  
22 Ms. Moss served as election workers at the State Farm Arena in  
23 Fulton County, Georgia, and their job was to help process  
24 absentee ballots. Being that it was the middle of the  
25 pandemic, there were a lot of them. And election day was very

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1 busy, but it was pretty uneventful, and really, nothing  
2 happened to them for the next couple of weeks.

3 That all changed on December 3rd, 2020. On that day,  
4 Giuliani began claiming on television, radio, and social media  
5 that surveillance footage of Ms. Freeman and Ms. Moss from  
6 Election Day was proof of fraud. He cited Ms. Freeman and Ms.  
7 Moss as the definitive reason then-President Trump lost the  
8 election in Georgia. And to put these statements in context,  
9 Giuliani, an experienced lawyer, made these statements after  
10 the Georgia state election officials had conducted multiple  
11 recounts and confirmed that the results were valid.

12 And Giuliani got very granular in his discussion of  
13 Ms. Freeman and Ms. Moss. He said that they were picked --  
14 that they had kicked out election observers for the purpose of  
15 counting illegal ballots, hid illegal ballots in suitcases  
16 under tables, counted the same ballots multiple times, and  
17 passed around a USB port like it was crack cocaine to upload  
18 illegal ballots. They also accused Ms. Freeman of having a  
19 criminal record.

20 The targeting of these two women was intentional. In  
21 fact, there is a strategic plan bearing Mr. Giuliani's name  
22 that was provided to the Trump campaign. And if there was any  
23 lingering doubt, the day after his very first public statements  
24 on December 4th, and the days after, law enforcement and  
25 Republican officials in Georgia publicly and repeatedly refuted

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1 Mr. Giuliani's statements.

2 THE COURT: Ms. Strickland, I don't want to -- I  
3 understand how important this hearing is and that your clients  
4 are heard in the bankruptcy. But you do have to recognize I'm  
5 not the district court in DC who has entertained all this. So  
6 I do have the sad story in front of me in your papers. So I'm  
7 okay if you hit the highlights briefly, but just in the  
8 interest of efficiency today, I'd ask that you keep to the  
9 highlights, just, again, recognizing your clients, how  
10 important it is that people feel heard in court. That's very  
11 important. But I do realize we probably have quite a bit to  
12 talk about as to the motion itself.

13 MS. STRICKLAND: Very good. Skipping. So he gets  
14 sued. Moves to the discovery phase. He sits there. He barely  
15 participates. He doesn't preserve materials. He produces  
16 almost nothing. Let me give you a sense of what he produces:  
17 Hundreds of documents consisting of nonreadable computer code,  
18 emails advertising a year-long spiritual apprenticeship course,  
19 memes about George Floyd, and death notices for The Washington  
20 Post. Other parties produce things that we know he has. He  
21 doesn't produce them.

22 This goes on for months and months. The district  
23 court is frustrated. He's ignoring orders. My clients file a  
24 motion for sanctions, and in response to that motion, he  
25 doesn't defend his conduct. He files two documents in which he

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1 stipulates to all of the elements of the claims. He conceded  
2 that he defamed our clients, intentionally caused them  
3 emotional distress, and told the court that liability should be  
4 treated as though there's default liability.

5 Your Honor, I have the stipulations. I can pass them  
6 up to you if you would like.

7 THE COURT: Well, that's the one thing I didn't see a  
8 copy listed in the exhibits of the judgment. And I don't know  
9 that I have -- I don't know if the stipulations are -- I think  
10 it's just referenced the docket. So I would appreciate those  
11 because I think they are helpful background for purposes of  
12 understanding things that are relevant for the bankruptcy going  
13 forward.

14 MS. STRICKLAND: Certainly. May I approach?

15 THE COURT: Yeah. Please. Thank you. It is helpful  
16 to have the documents from the District Court in the District  
17 of Columbia, an old stomping ground of mine, as they speak  
18 directly to what that court did. And so that's helpful.

19 So what you handed me is a small binder of some six  
20 tabs, all of which contain, well, either pleadings or orders or  
21 decisions of the district court in that case and various docket  
22 numbers. And so thank you for that. Proceed.

23 MR. FISCHOFF: Thank you, Your Honor. So the first  
24 two tabs are actual stipulations, where they are signed by Mr.  
25 Giuliani. I would point you to tab 2, which is a very short



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1 stipulation. In paragraph 1, he stipulates he's made the  
2 statements, that they were defamatory. Paragraph 2 says he  
3 published the statements to third parties; 3, if they were  
4 facts, they were false; 4, he doesn't contest the factual  
5 elements of intentional infliction of emotional distress; 5,  
6 he's liable for punitive damages; and 6, that there's default  
7 liability.

8 Throughout this, and this goes to what is it he could  
9 actually appeal, he preserves three things, the right to argue  
10 that the things he said were his opinions or constitutionally  
11 protected, the right to seek set off, and you'll see in a later  
12 order, there actually was a two-million-dollar set off, and a  
13 reservation as to whether his statements cause damages and what  
14 amounts. So --

15 THE COURT: And that's in paragraph 3, if I'm looking  
16 in the right spot?

17 MS. STRICKLAND: The reservations are littered  
18 throughout, but they're repetitive.

19 THE COURT: All right.

20 MS. STRICKLAND: It's the last sentence of a couple --

21 THE COURT: Okay.

22 MS. STRICKLAND: -- of them.

23 THE COURT: I see it.

24 MS. STRICKLAND: So following these stipulations, on  
25 August 30th, District Judge Howell enters an order approving

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1 the motion for sanctions. But she doesn't rely on these  
2 stipulations, which are qualified. Instead, she goes to her  
3 record. She's got deposition testimony, numerous witnesses,  
4 documents others have produced, and she independently  
5 determined that the elements of the causes of action had been  
6 satisfied. So not only do we have this stipulation, we also  
7 have the record.

8           Following the entry of the sanctions order, Judge  
9 Howell orders that a jury trial be held to determine the amount  
10 of compensatory and punitive damages owed to Ms. Freeman and  
11 Ms. Moss. That's where the 148 comes in. And then there's  
12 something else that bears noting in the binder I gave you,  
13 which is in tab 6.

14           When you go to tab 6, you look at what is the  
15 reasonable likelihood that there could be an appeal here. So  
16 the procedural posture would be to go back to Judge Howell and  
17 say what the jury did was outrageous and these numbers are  
18 super high. But if you look at tab 6, which is the memorandum  
19 and order that Judge Howell entered at docket 144, and you turn  
20 to page 11 of that document, Judge Howell has considered this  
21 and weighed in on it.

22           Towards the bottom of that page 11, she says:

23           "The obvious fact that the jury's unanimous awards  
24           were conservative as to plaintiffs' requested  
25           compensation for reputational harm due to Giuliani's

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1           defamation, per se, based on the expert's calculation  
2           of the cost of repairing their reputations and the  
3           jury's punitive damages award nearly equivalent to  
4           compensatory damages rather than multiplied by up to  
5           four times compensatory damages, any attempt to reduce  
6           this award faces challenges."

7           So it's not as if this hasn't been asked and answered.  
8       All of the issues here are things that have been carefully  
9       considered by the district court. So the notion that Mr.  
10      Giuliani is going to be able to quickly file some motion and  
11      have something reconsidered is just --

12           THE COURT: Well, I understand that, and you have good  
13      reasons for making the arguments you're making. Obviously, you  
14      recognize that in a traditional bankruptcy case, if there is  
15      such a thing, when there's a -- that is motivated by a judgment  
16      or involves a judgment as a debt that the debtor's dealing  
17      with, bankruptcy courts don't necessarily get behind what's  
18      going on in a trial court and say, well, you have whatever  
19      rights. The trial court and the appellate court will sort it  
20      out.

21           I do think there's a legitimate concern here about the  
22      expenses and the cost and the delay. I guess my question for  
23      you is to how to sort out those principles in this particular  
24      case, and maybe you've already done that with your road map in  
25      terms of analyzing how these competing interests best play out.

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1 MS. STRICKLAND: Sure. Well, there's no shortcut to  
2 what Mr. Giuliani's counsel says his cocounsel litigation firm  
3 wants to do. The process by which Mr. Giuliani could get to  
4 the end of the road includes motions that, A, are very unlikely  
5 to succeed, but B, largely result in a remand and going back to  
6 square one for our clients, where it would be a very long and  
7 protracted and expensive process. And while I appreciate Mr.  
8 Fischhoff's representation that he's not aware of litigation  
9 counsel seeking to dissipate the assets of the estate, the  
10 retention filings that they made on Your Honor's docket  
11 actually don't say that at all.

12 THE COURT: No. I recognize that that's a very  
13 legitimate concern, and we don't have that nailed down yet.

14 MS. STRICKLAND: Right.

15 THE COURT: But to the extent that -- again, thinking  
16 about this case in traditional principles, if somebody said,  
17 well, we prevailed on appeal and there's a lesser number that  
18 the, that the court thinks is appropriate, that's sort of an  
19 odd argument to use to say the stay shouldn't be lifted. I  
20 understand the concern about the amount of money and that  
21 concern, coupled with the amount of money involved and the  
22 looming nondischargeability case decision that would have to be  
23 made.

24 The reason I mentioned nondischargeability, just to  
25 sort of get it out there, oftentimes creditors in court, often

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1 in state court, will come in and say this is nondischargeable.  
2 But what they have just facially and almost immediately can be  
3 recognized as not using the language of the Bankruptcy Code,  
4 which is very specific. And the reason why I call this out  
5 here as something a little different than what I usually see is  
6 it uses language that detracts particular sections of the Code  
7 here and makes it look facially to be in a different posture.

8 MS. STRICKLAND: Not our first rodeo, Your Honor.

9 THE COURT: Well, so again, no decisions. That's not  
10 a decision that's to be made today. I'm just pointing out  
11 things that have been argued to me, looking at the documents,  
12 that it puts it in a different posture than what I usually see.

13 But I guess my thought is what do you think should  
14 happen, looking at these principles. It sounds like in your  
15 papers that you were okay with, or may be okay with -- maybe  
16 that's a better way of saying it -- what's now been  
17 specifically committed to as a specific motion dealing with  
18 damages, the damage portion of the trial, and that if the  
19 automatic stay is -- I think in a case like this, it may be  
20 that it has to be taken step by step by step, as opposed to a  
21 broader approach.

22 But is that something you're -- it look like in your  
23 papers, that's something your client could live with, with the  
24 understanding that the funds were coming elsewhere, again,  
25 subject to that being the case as may be played out in the next

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1 week or two. Is that something your client still can live  
2 with; am I understanding that correctly?

3 MS. STRICKLAND: What we're prepared to do -- no one's  
4 looking to time someone out or to have their rights expire. If  
5 they want to file pleadings that preserve their right to --  
6 whether it be seek a new trial, whether it be revisit damages,  
7 and they want to file things so that we aren't looking at  
8 tolling and 108 and issues of that nature, we are fine with  
9 that, and they need do nothing else. But then the stay comes  
10 down.

11 THE COURT: But does that mean anything associated  
12 with that? So it's a motion -- these are my words, not  
13 counsel's words, but a motion to say the damages should be  
14 vacated because here's all the reasons, which presumably would  
15 then lead to a response by your client, and then the district  
16 court may or may not decide to have argument. I assume that  
17 would all be part of that silo.

18 MS. STRICKLAND: That would be part of that silo.

19 THE COURT: All right.

20 MS. STRICKLAND: But that's it. For anything else,  
21 Mr. Giuliani needs to pass three hurdles that he can't clear.  
22 One, our position is he has to actually ask for relief that  
23 Your Honor can grant. Two, he has to meet the burden to show  
24 that cause exists, which I don't think it's in the papers, and  
25 I certainly didn't hear it today. And then if all of that were

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1 to occur, we get to the Sonnax factors that don't balance in  
2 his favor. I'd like to address those three hurdles.

3 The motion impermissibly seeks to appeal while asking  
4 you to stay our clients from proceeding to perfect their liens  
5 or otherwise enforce their judgment. As Your Honor knows, case  
6 after case rejects attempts of debtors to use Chapter 11 to  
7 obtain a litigation advantage.

8 THE COURT: I agree there's a concern -- there is a  
9 concern about sword, shield here. Right. That's what the  
10 cases talk about. Judge Glenn and the ResCap case uses that,  
11 and he's quoting from another case.

12 At the same time, I think the case law is a bit mixed  
13 about the notion of saying, well, someone would ordinarily have  
14 to post a bond to get a stay, and instead, they file for  
15 bankruptcy and they get a stay, is that something that's  
16 permissible. Is that kosher, for lack of a more legal term.  
17 And cases seem to be a little all over the map on that,  
18 sometimes looking at whether it's a judgment that the debtor  
19 has the financial wherewithal to actually pay, as opposed to  
20 one that the debtor would essentially need the bankruptcy to  
21 reorganize.

22 So I don't know -- I understand the concerns and  
23 particularly in light of the findings of the district court at  
24 various junctures about the case that you all lay out in your  
25 papers. But my thought is that I think there's some benefit to

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1 taking this step by step by step so the new trial stays any  
2 obligation to file an appeal, if such a motion gets filed, and  
3 then we can monitor things and see how things go. Meanwhile,  
4 the bankruptcy will proceed. Schedules will get filed. There  
5 will be discussions. And I would imagine that your clients  
6 will file some sort of pleading, whether it be a  
7 nondischargeability, adversary, or something else that tees up  
8 other issues.

9 And then my thought is to take it as a developing  
10 situation. We all do better with the specific facts as they  
11 unfold, rather than trying to guess. And again, there's a  
12 complicated history in the district court in DC that I want to  
13 be respectful of, and taking it on a step-by-step basis, given  
14 all those concerns, seems to be the way to go. And certainly,  
15 that's also the message I took from your papers, that what  
16 you -- again, you can correct me if I'm wrong, that what you  
17 were against is a carte blanche, here, go off and do what you  
18 want to do in that litigation and that that's not something  
19 that you're comfortable with. I understand that.

20 MS. STRICKLAND: Your Honor, I want to back up two  
21 steps and unpack a couple of things. One, we are not looking  
22 to litigate again and relitigate again with Rudolph Giuliani  
23 during the pendency of these cases. We believe that Your Honor  
24 is going to establish that our claims are nondischargeable.  
25 And when it's over, we'll be litigating.



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1           If they want to preserve their right to litigate, they  
2     can do that. But we're not looking to be exchanging papers in  
3     district court or anywhere else with him while he is elevating  
4     his appellate lawyers in priority over general unsecured  
5     creditors in these cases and diminishing administrative  
6     expenses.

7           THE COURT: Well, two things on that. One is I don't  
8     think we know yet. There's a question about where the source  
9     of funding is. The papers are going to get filed. We have to  
10    sort that out. You're not alone in having that concern. I  
11    know the committee has that concern. I know the U.S. Trustee's  
12    office has that concern. I see Mr. Schwartz raising your hand.  
13    I get it. And trust but verify, isn't that the phrase, so I  
14    understand that.

15           But as to the notion of exchanging papers, I guess I'm  
16    a little confused, and maybe I'm not following. If they file a  
17    motion as, as has been represented, that the intent is to lift  
18    the stay to file a motion to deal with the damages in the  
19    Freeman litigation, I would imagine that would involve the  
20    exchange of papers. And whatever the district court -- it's  
21    not my job to micromanage the district court's docket. It's  
22    inappropriate. And so the district court will do whatever and  
23    manage that issue.

24           If the district court says, I don't want to see that  
25    motion now or there's a reason not entertain that motion, the

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1 district court can do that. If district court says, I get the  
2 opposition. I'm going to have a hearing. Whatever the  
3 district court decides is appropriate.

4 On how to deal with that silo, I would think if it  
5 involves the filing of papers, I would think that that's just  
6 how it goes. It would be a logical consequence of the filing  
7 of the motion, unless I'm missing something.

8 MS. STRICKLAND: Well, I also want to go to your --

9 THE COURT: But let me just see if I can get that  
10 nailed down because I want to make sure I understand your  
11 position because I thought we had agreed on that, but I might  
12 be wrong about that.

13 MS. STRICKLAND: Your Honor, I think you have gone  
14 past our comfort zone in the sense that he can preserve the  
15 right to argue whatever he wants at the appropriate time. We  
16 don't believe that appropriate time for that litigation is  
17 right now. We are not looking to toll Mr. Giuliani out. If he  
18 wants to preserve things by making his filings wherever he  
19 wants to make them, he can do it, but that's it.

20 And this is where your summary of the case law matters  
21 because you're right that the courts looked at a whole bunch of  
22 different factors in this type of litigation. But the cases  
23 where courts looked and said, well, is this a litigation  
24 tactic, is there an ongoing business, and the factors you  
25 articulated were in the context of whether it was a bad-faith

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1 filing where the case should be dismissed.

2 What you won't find are debtors who do seek as  
3 defendants to go forward with a lift of stay for litigation  
4 they've lost who don't have to post the bond. That, you don't  
5 see. And in fact, if you look at Wally Findlay, if you look at  
6 the cases, the courts say, we are not going to be a bankruptcy  
7 substitution for supersedeas bond.

8 THE COURT: But again, I think the cases are  
9 complicated, and it depends on the facts and circumstances.  
10 But a lot of those cases, it sounds like, have motions to  
11 dismiss for various grounds. And maybe I'll get such a motion,  
12 maybe I won't, but I can't essentially assume such a motion. I  
13 have what I have in front of me. And my thought is that, one,  
14 there's significant questions as to where the funds are coming  
15 from. That's not yet figured out. And two is that I wanted to  
16 know precisely what the request was.

17 But when it comes to saying, well, he can make the  
18 motion but nothing further can happen, that seems to me that  
19 I'm then putting myself as telling what the district court in  
20 DC should do in terms of -- the district court, it'll be a  
21 motion in the district court. The district court judge will  
22 figure out how to handle that in whatever way is appropriate.  
23 And if I start telling the district court, well, he's got to  
24 file it, but nothing else is going to happen, I'm sticking my  
25 nose in where it shouldn't -- where it shouldn't go.

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1 And so certainly, you have the right to make whatever  
2 arguments you want to make in the district court as to how far  
3 to go with those things. Right. I can understand you have  
4 arguments to say, Judge, this should be rejected out of hand.  
5 This should be stayed because we've got the bankruptcy and  
6 we're making arguments to the bankruptcy of X, Y, and Z. But  
7 to me, that's the proceedings in the district court, and I am  
8 not supposed to be -- I don't think it's appropriate for me to  
9 be micromanaging what that court does.

10 MS. STRICKLAND: I agree. I think that that's -- I  
11 think the conclusion is the same. Right now, we have an  
12 automatic stay. No one's moving. You're not micromanaging  
13 anyone.

14 The debtor is saying, we want you to lift the stay.  
15 The district court has already spoken about what happens when  
16 the stay is lifted. The posture that Mr. Giuliani returns to  
17 is there is already a district court order that says you don't  
18 even get thirty days under Federal Rule of Civil Procedure  
19 62(a). I have dispensed with it --

20 THE COURT: No, I understand that. But again, what I  
21 understand the request is to file a motion dealing with  
22 damages. And if, in fact, no estate money is going to be  
23 spent, which is a significant issue, then the question is how  
24 the district court wants to handle that. There are a lot of  
25 things that happen after a judgment, stays, enforcement,

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1 different kinds of stays. We've got a bankruptcy stay here.  
2 There are stays, as you said, that sort of arise naturally  
3 after a judgment. And then there are stays that you can  
4 request pending appeal.

5 So my thought is if there's a motion seeking to  
6 challenge the damages, then the district court will decide what  
7 to do with that. And any other requests for the debtor to do  
8 something other than file that motion and do whatever the  
9 district court directs in the natural course of business, the  
10 debtor would come back here. And I think, thinking out loud,  
11 that's the place I'm comfortable being because this idea of  
12 putting in a placeholder and then stopping, that request is  
13 something that certainly can make to the district court.

14 But the district court may have strong views one way  
15 or the other on exactly what should happen when a motion like  
16 that is filed. And I just don't see myself as a party, that  
17 the bankruptcy should not interfere with that. Whatever  
18 naturally comes from the consequence of filing that motion, the  
19 district court is more than up to the task and the right place  
20 to decide that.

21 So I'm not comfortable, sitting here right now, with  
22 sort of a half measure where something's filed, but then I've  
23 issued the kind of stay I've never issued before. You say you  
24 can file it, but you can't pursue it. If I were a district  
25 court -- a trial court, I really wouldn't know what to do with

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1 that. And one of the things that we have to do here in  
2 bankruptcy court is when interacting with trial courts and  
3 state matters is issue things that are clear and that where the  
4 trial court doesn't have to parse what is going on in  
5 bankruptcy and become an expert in bankruptcy to figure out how  
6 to appropriately handle that.

7 So my thought is if that motion's filed, whatever  
8 comes as a result of that motion, that's for the district court  
9 to address. That would be clear. It would be defined. It  
10 would not be hard to follow for anybody. And then anything  
11 else would come back. So that's, again, thinking out loud  
12 here, sitting on the bench. But I appreciate the colloquy back  
13 and forth to try to figure out --

14 MS. STRICKLAND: Right.

15 THE COURT: -- some of the concerns we're going to  
16 bump into as the case progresses.

17 MS. STRICKLAND: We're okay going back and forth with  
18 the district court on whether or not there should be a new  
19 trial. The piece where I get stuck is appeal. Mr. Giuliani  
20 can't --

21 THE COURT: Well, I think I -- what I'm hearing is  
22 that the request is to make this motion for essentially a new  
23 trial on damages or anything dealing with damages and that  
24 that's going to come first and that after that, the debtor will  
25 come back if it wants to seek to lift the stay to pursue an

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1 appeal because you'd have to get a decision on that motion  
2 first; am I understanding correctly?

3 MR. FISCHOFF: Yes and no. So if the motion is denied  
4 or whatever the outcome, the notice of appeal is then due  
5 within approximately thirty days. Different than a motion,  
6 after you file a notice of appeal, there's time to perfect. So  
7 we would ask that the Court authorize that if there's an  
8 appropriate reason that we can file the notice of appeal, but  
9 then we'd have to come back to this court to perfect it, just  
10 because we don't --

11 THE COURT: To take action in the --

12 MR. FISCHOFF: Correct. Yes. So we want to just file  
13 the appeal --

14 THE COURT: Of course, the DC circuit may have some  
15 views about an appeal on its docket that's sitting there in  
16 perpetuity. But we'll burn that bridge when we come to it.

17 So there's two observations here. I'm happy to make  
18 myself available if it promotes justice and clarity. If the  
19 district court makes a ruling and then the question comes up  
20 and you have thirty days, I'll have a hearing. That's fine.  
21 But if everyone agrees that a notice can be filed -- again, I  
22 think this may be a question of drafting, but if it's just a  
23 notice, that maybe something Ms. Strickland's client can live  
24 with. It may not be. I don't know.

25 MS. STRICKLAND: I want to be -- I want to be clearer

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1 than I have been. What Mr. Fischhoff said is --

2 THE COURT: I will say, I did clerk for a district  
3 judge in the District of Columbia. And so when I think about  
4 telling a district judge in the District of Columbia what to  
5 do -- what they can do and what they can't do, I do have the  
6 voice of Charles R. Richey in my head. So I will tell you that  
7 I think I understand where he would be coming from. So that  
8 informs my decision making.

9 MS. STRICKLAND: Excellent.

10 THE COURT: Ms. Strickland.

11 MS. STRICKLAND: So let's talk about what the district  
12 court in the District of Columbia has done. They have a  
13 default judgment. They have a jury trial. There's the damages  
14 award. We then go back and forth on whether or not we can  
15 enforce immediately or there's going to be any stay. Forget  
16 thirty days. Thirty seconds.

17 THE COURT: I got it.

18 MS. STRICKLAND: Judge rules, no, you can enforce  
19 immediately. Your choice is file a bond. They say, we'd  
20 rather file for bankruptcy. Now, they're coming back. They're  
21 saying, we want a new trial. I am telling Your Honor, if they  
22 want to file a motion for a new trial, we will agree  
23 consensually to go to Your Honor and say, please lift to stay  
24 for that purpose only.

25 The minute we get to appeal, they can do one thing and



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1 one thing only. They can file a notice of appeal. Otherwise,  
2 they have two choices. They are stayed, or the Federal Rules  
3 of Civil Procedure still apply. They apply to debtors. They  
4 apply to parties-in-interest in bankruptcy and out of  
5 bankruptcy incorporated into the Federal Rules of Bankruptcy  
6 Procedure.

7 THE COURT: Well, again, the DC circuit may decide to  
8 tell all of us something about that if it comes to it. But the  
9 notice of filing, the idea of filing a notice and a notice  
10 alone is something that doesn't cost the estate and it doesn't  
11 incur further litigation and I think could be drafted  
12 appropriately in an order so that everybody understands. And  
13 certainly, if the DC circuit has a different view, my  
14 understanding is they certainly have cases on appeal that are  
15 subject to bankruptcy proceedings. And so they're all very  
16 smart people. Understand the concept of a bankruptcy stay.

17 So that seems to be -- I'm not suggesting that a full-  
18 blown appeal go forward by virtue of the record I have in front  
19 of me. I am not comfortable with that notion. There's a lot  
20 of unanswered questions and concerns that have been raised.  
21 And so I think we're on the same page.

22 MS. STRICKLAND: Great. But for our suggestion of  
23 where we would be comfortable going, I think the record is  
24 pretty clear from my perspective that there's been no cause  
25 shown. And I can go through the Sonnax factors --

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1 THE COURT: No, I --

2 MS. STRICKLAND: -- but nobody else did so --

3 THE COURT: Well, no. The committee did as well.

4 MS. STRICKLAND: No, I don't mean in our papers. I  
5 mean today. I have not heard the debtors go through the  
6 application of the Sonnax factors in their papers or live.  
7 So --

8 THE COURT: Yeah, no, I --

9 MS. STRICKLAND: -- they haven't met their burden at  
10 all.

11 THE COURT: I understand. At this point, I think you  
12 can keep your powder dry --

13 MS. STRICKLAND: That's what I thought, Your Honor.

14 THE COURT: -- on the Sonnax factors, as those are  
15 issues that we deal with regularly here in this court, and I do  
16 have a briefing by you and by the committee on that subject.

17 So anything else, Ms. Strickland, before I hear from  
18 the committee?

19 MS. STRICKLAND: No, Your Honor.

20 THE COURT: All right.

21 MS. QURESHI: Good afternoon, Your Honor. For the  
22 record, Abid Qureshi, Akin Gump Strauss Hauer & Feld. We are  
23 proposed counsel -- excuse me. We are proposed counsel to the  
24 official committee of unsecured creditors. As Your Honor will  
25 hear, when our retention application gets filed, Akin is

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1 proposing to handle this representation of the committee on a  
2 pro bono basis in light of what I will describe as the unique  
3 facts that are before the Court.

4 Your Honor, if I could, before jumping into the  
5 merits, just give Your Honor a quick background on who is on  
6 the committee because I think that that bears relevance to the  
7 issue we're talking about today. There are three members, Your  
8 Honor. US Dominion Inc., they have commenced a lawsuit against  
9 Mr. Giuliani, also in district court in DC, seeking 1.3 billion  
10 dollars in damages for defamation in connection with false  
11 claims made by Mr. Giuliani related to Dominion's voting  
12 machines.

13 THE COURT: And if I understand, that's the lawsuit  
14 where it's been settled as to other defendants?

15 MS. QURESHI: I believe that's correct, Your Honor.  
16 That lawsuit as to Dominion has not yet gone to trial.

17 Your Honor, Ms. Dunphy is also a member of the  
18 official committee. She is a plaintiff in a lawsuit against  
19 Mr. Giuliani and other related parties that is pending in New  
20 York Supreme Court in connection with a host of sexual  
21 harassment, sexual discrimination, and related claims. And  
22 that also, Your Honor, has yet to go to trial.

23 And then we Ms. Shaye Moss, who along with her mother,  
24 Ms. Freeman, of course, are the judgment creditors.

25 So Your Honor, let me start by saying the committee

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1 supports the opposition papers that Your Honor saw from Ms.  
2 Strickland's firm. We support their argument. From the  
3 committee's perspective, Your Honor, we of course approach this  
4 issue from the perspective of our statutory and fiduciary  
5 duties to all unsecured creditors. And from that vantage  
6 point, Your Honor, this also is a motion that we think should  
7 be denied.

8 So Your Honor, jumping to this issue of what should  
9 Mr. Giuliani be permitted to do at this stage in connection  
10 with pursuing a retrial of the damages question, from the  
11 committee's perspective, and while no doubt Ms. Moss and Ms.  
12 Freeman have suffered egregious harm and need to be compensated  
13 for that, we also want to ensure that any lifting of the stay  
14 does not have the unintended consequences of allowing certain  
15 creditors to jump the queue ahead of others. And so what we  
16 would not want to see is the ability for Ms. Moss and Ms.  
17 Freeman to start executing on their judgment the minute the  
18 stay is lifted because we have --

19 THE COURT: Then the status quo is lost.

20 MS. QURESHI: Right.

21 THE COURT: Yeah.

22 MS. QURESHI: Exactly. And that would defeat the  
23 purpose of being in bankruptcy in the first place. And so Your  
24 Honor, if I could, also I just want to revisit the step-by-step  
25 approach, which I think is the correct one. What we would

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1 propose, and I recognize Your Honor is saying you don't think  
2 you have the authority to do this, but let me lay out, if I  
3 could, what we think of as the logical progression here.

4 So we understand that Mr. Giuliani has an approaching  
5 deadline. I believe it's February the 18th, A deadline by  
6 which if he is going to seek a retrial of damages, that needs  
7 to happen or his right to do so will be lost. Your Honor, we  
8 agree, the committee is not, Ms. Freeman and Ms. Moss are not  
9 attempting to use bankruptcy to let that deadline lapse such  
10 that Mr. Giuliani loses that right. However, I think there are  
11 some things that it makes sense to happen in this court first,  
12 before Mr. Giuliani seeks that retrial.

13 Number one, we need clarity on the retention  
14 application so we have a clear understanding of if there are  
15 going to be legal fees incurred, that those are not going to  
16 deplete the estate. Clearly, a very important issue.

17 Number two, Your Honor, is the dischargeability issue  
18 because at the end of the day, if -- and the dischargeability  
19 issue, I think, goes hand in hand with the filing of Mr.  
20 Giuliani's schedules and statements. I think the most  
21 charitable way to put it with respect to schedules and  
22 statements, Your Honor, is that the district court has found  
23 that Mr. Giuliani has, at best, a transactional relationship  
24 with the truth.

25 It is the committee's intention to use the bankruptcy

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1 process to investigate what we see from Mr. Giuliani with  
2 respect to schedules and statements and his assets and what  
3 they consist of and where they may have gone. And that is all  
4 important because Your Honor, if we get to a nondischargeable  
5 finding, which we think is highly likely to be the case here,  
6 if it hasn't been stipulated to already, subject to what an  
7 investigation ultimately shows as to what his assets are, it  
8 may be the case, Your Honor, that it's entirely futile for Mr.  
9 Giuliani to engage in a new trial with respect to damages. And  
10 at that point, we would have a sense of is there a prospect for  
11 reorganization for a viable Chapter 11 plan at all.

12 And so from our perspective, the ideal step-by-step  
13 process would be lift the stay for the very limited purpose of  
14 allowing Mr. Giuliani to preserve the right ultimately to seek  
15 a retrial on damages. And that would consist of allowing him  
16 to make whatever filing needs to be made in order for that  
17 deadline not to lapse. Then immediately reimpose the automatic  
18 stay so everything stops. That --

19 THE COURT: Well, in mulling this over and at the  
20 risk --

21 MS. QURESHI: Yeah.

22 THE COURT: -- of overly complicating a already  
23 complicated situation, I certainly wouldn't have a problem if  
24 the order said this is the extent of the stay. And to the  
25 extent the district court decided in its judgment it was

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1 appropriate to have that motion made and to not proceed further  
2 until the bankruptcy proceeds, that's fine. Again, I don't  
3 think --

4 MS. QURESHI: Yeah.

5 THE COURT: -- I have the authority to do that, and I  
6 think there are lots of good reasons that I shouldn't stick my  
7 nose in a district court's business, particularly in a case  
8 that has as many nuances as this. But certainly, to the extent  
9 that the district court may say, what does the bankruptcy judge  
10 want to do; I don't want to step on the bankruptcy -- step on  
11 the toes of the bankruptcy proceeding, certainly, the order  
12 could be drafted in a way to say that the district court should  
13 handle that motion, however it deems appropriate, and  
14 understanding that the bankruptcy court takes no position on  
15 whether the motion needs to be prosecuted at this time or  
16 however you wanted to phrase it --

17 MS. QURESHI: Right.

18 THE COURT: -- which essentially would serve the needs  
19 of preserving the right, and the district court then can make  
20 that decision.

21 MS. QURESHI: Your Honor, from our perspective, I  
22 think that's entirely appropriate. Give the district court the  
23 ability to alter that if the district court so chooses. And  
24 again, we would want to ensure that that order is also very  
25 clear that the stay is not being lifted for purposes of Ms.

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1 Freeman and Ms. Moss actually executing so that the status quo  
2 can be preserved.

3 THE COURT: No, I think that's fair.

4 MS. QURESHI: Yeah.

5 THE COURT: And that's the whole sword-shield --

6 MS. QURESHI: Right.

7 THE COURT: -- thread in the case law on motions to  
8 lift the automatic stay, that it can't be used as a sword and a  
9 shield, that it's designed to preserve the status quo for the  
10 benefit of all creditors in the posture that they're in. And  
11 so I think everybody agrees that that's the right way to go.

12 I do think Ms. Strickland's comments, I think, are  
13 very much of the sword-shield variety, where she's saying if  
14 you cross a certain point, that it becomes unfair to the  
15 Freeman plaintiffs to say we're now having to fight with one  
16 hand tied behind our back. Whatever metaphor you'd like to use  
17 about something being unfair. So that's how I took the  
18 comments.

19 MS. QURESHI: Yeah, and we agree with that, Your  
20 Honor.

21 THE COURT: All right.

22 MS. QURESHI: That's all I had, unless the Court has  
23 questions.

24 THE COURT: I don't.

25 MS. QURESHI: Thank you.



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1 THE COURT: And I see counsel for the debtor rising.  
2 I'm going to hear from the --

3 MR. FISCHOFF: Yes.

4 THE COURT: -- U.S. Trustee's office in a minute, but  
5 if you wanted to chime in.

6 MR. FISCHOFF: Yeah.

7 THE COURT: A lot of things have been said that that  
8 to the extent there's some clarification you want to make.

9 MR. FISCHOFF: Yes. So I think proposal by creditors  
10 committee is making more complicated a complicated issue, as  
11 the Court referred to it, already.

12 THE COURT: I will say, we take the cases in whatever  
13 posture they come in. And sometimes, it's straightforward.  
14 And sometimes, it's not. And I think there's been a very  
15 complicated factual scenario that we're walking into. It is  
16 what it is, and so we have to deal with it in the most  
17 appropriate way in terms of cause.

18 And the reason why I'm focusing so much on the  
19 agreement of the parties and what parties can live with is  
20 frankly, the motion doesn't answer the mail. It doesn't lay  
21 out the Sonnax factors. There's case law that says when you  
22 don't engage in an analysis on Sonnax factors, that is alone a  
23 basis for denial of a motion. It's very pro forma.

24 And so I mean, there is a basis to deny it, given the  
25 record. I understand you didn't get a chance to reply to the

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1 oppositions. That's sort of a function of the odd procedural  
2 posture. We've made a complicated case even more complicated  
3 as we've gone, seeking it on an emergency basis. Then it got  
4 pushed off for another week. I understand that. And nothing  
5 about -- so my thought is what can be done today to move things  
6 forward.

7 And so if -- and I think, no matter where we end up,  
8 the notion of a step-by-step process, given all the complicated  
9 factors here, I think everybody agrees has some appeal. But as  
10 I said, whatever I do, I'm not going to tell the district court  
11 how it should handle things in that case.

12 MR. FISCHOFF: And that brings up my concern. We  
13 still have to deal with the possibility that the district court  
14 says, well, no to the motion. Then that gives rise to the  
15 debtor's need to file a notice of appeal.

16 THE COURT: Yeah, but I think the tweak that we just  
17 discussed -- and again, it's my fault for injecting that  
18 additional wrinkle, and that's what it is. It's a wrinkle to  
19 what was already discussed that lays out exactly --

20 MR. FISCHOFF: Okay. It sounded like a fold but --

21 THE COURT: -- the extent of how far you can go,  
22 including --

23 MR. FISCHOFF: Yeah.

24 THE COURT: -- a notice of appeal, but no further in  
25 an appeal.

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1 MR. FISCHOFF: Right.

2 THE COURT: But it also says that to the -- that would  
3 probably have a separate paragraph, and that paragraph would  
4 say that as to the motion that will be filed, the district  
5 court, obviously this Court takes no opinion about how the  
6 district court wants to handle that motion and understands that  
7 the parties will make an argument to the district court that  
8 the motion should be stayed, some parties, in light of the  
9 bankruptcy but that this Court believes that that decision  
10 about whether to proceed with the motion on damages or not is a  
11 question for --

12 MR. FISCHOFF: Yeah. Right.

13 THE COURT: -- the district court to answer on the  
14 first instance.

15 MR. FISCHOFF: Understood.

16 THE COURT: I'm sure you can say that in a more  
17 articulate and nuanced way than I just said it because I could  
18 see Ms. Strickland's blood pressure rising --

19 MR. FISCHOFF: Yeah.

20 THE COURT: -- where I articulated it. And I'm just,  
21 I'm spitballing here.

22 MR. FISCHOFF: I'm sure she'll have a draft for me  
23 very shortly.

24 THE COURT: All right.

25 MR. BERGER: I think it's our desk.

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1 THE COURT: I don't want -- I don't want to beat a  
2 dead horse. We'll get to wordsmithing, and we can --

3 MS. STRICKLAND: Your Honor --

4 THE COURT: -- talk about --

5 MR. FISCHOFF: And one other point, if I may. I just  
6 want to say, we will get the necessary update, too, so that the  
7 Court is assured, as we have been assured, that the fees will  
8 be paid by the two defense funds.

9 THE COURT: Yeah, that needs to happen quickly.

10 MR. FISCHOFF: And we'll make sure because I --

11 THE COURT: And I think that needs to happen before  
12 the order is entered.

13 MR. FISCHOFF: Right. We're going to work on that  
14 simultaneously.

15 THE COURT: And if there's an issue about that, then  
16 we'll have to --

17 MR. FISCHOFF: Figure it out.

18 THE COURT: -- get back together --

19 MR. FISCHOFF: Yeah.

20 THE COURT: -- and unpack the issue.

21 MS. STRICKLAND: Your Honor, I just want to make sure  
22 that we have our compartments straight. I'm not trying to  
23 draft on the fly.

24 THE COURT: Well, I just did. And I think, again,  
25 it's a dangerous thing to do. So I think I understand where

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1 you're coming from, and I think you have a sense of what I'm  
2 trying to accomplish.

3 MS. STRICKLAND: I do. I'd like to --

4 THE COURT: So what I would suggest is rather than try  
5 to make it perfect here on the fly is I'm happy to even take a  
6 break and let people noodle around with language and come back,  
7 say, after lunch and so that we can actually get it done today.  
8 I'm also happy to have people exchange language and then  
9 provide me with the most up-to-date thing and have a  
10 conference. It may be more fruitful to do it when we actually  
11 have language than to try to do it on the fly here today.

12 MS. STRICKLAND: I agree, and that wasn't where I was  
13 going. I just want to -- I want to figure out the concept.  
14 Forget about the language. The concept that I hear Your Honor  
15 articulating, which is fine, is stay lifted. Motion to  
16 district court for new trial. District court order says, in  
17 some form or fashion, do what you want with this.

18 That happens. District court does whatever it's going  
19 to do. You are not going to micromanage. You've been crystal  
20 clear. We are fine.

21 They lose, assume. If they win, it doesn't -- if they  
22 lose, then what has to happen is there is an appeal right. At  
23 that point, my understanding is your order is going to say you  
24 can file a notice and no more, and then you've got to come  
25 back.

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1 THE COURT: Correct.

2 MS. STRICKLAND: That's all I wanted to clarify.

3 THE COURT: Yep. Yep. Yep

4 MS. STRICKLAND: Okay. And we aren't remanding and  
5 doing --

6 THE COURT: No, no. It's just a notice and no  
7 further.

8 MS. STRICKLAND: Understood.

9 THE COURT: And subject to further order of the Court  
10 and --

11 MS. STRICKLAND: Exactly.

12 THE COURT: -- everybody reserving all rights and all  
13 that good stuff.

14 MR. FISCHOFF: And that's debtors understanding.

15 THE COURT: All right.

16 MR. BERGER: And we're good with that, Your Honor.

17 THE COURT: All right. We're making progress. So  
18 with that, let me hear from the United States Trustee's office.

19 Oh, you're on mute.

20 UNIDENTIFIED SPEAKER: Wait. Oh, she's talking.

21 MS. SCHWARTZ: I'm unmuted now, correct?

22 THE COURT: All right. Yes, we can hear you just  
23 fine. Thank you.

24 MS. SCHWARTZ: Andrea Schwartz, the United States  
25 Trustee. Judge, I had asked to kind of jump in before you got

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1 to the merits of the motion because I knew a lot of the issues  
2 that were going to be raised as part of the motion were issues  
3 that we have already been all over and addressed. And I wanted  
4 to be able to provide the Court with some information in that  
5 regard.

6 So let's start with the retentions, which are not a  
7 today issue, which are not on for another week and a half, but  
8 the bottom line being that one of the missing components of the  
9 two retentions that have been filed has been the source of  
10 funding and disclosure regarding that. So I wanted to let the  
11 Court know that we had already provided comments to both the  
12 Sibley & Camara (sic) firm that is the law firm that is  
13 proposed to handle the Freeman litigation, whatever steps are  
14 permitted pursuant to the stay, the limited lift stay or  
15 modification stay, whatever you want to call it, as well as the  
16 Aidala law firm that's proposed to be retained in connection  
17 with the various disciplinary actions that are pending  
18 regarding Mr. Giuliani.

19 And also let the Court know that it appears, based on  
20 our conversations with those lawyers, that their expertise is  
21 not bankruptcy, so this is a new process for them, and that we  
22 understand also that there's another law firm representing or  
23 proposing to represent, purporting to represent, Mr. Giuliani  
24 in the Georgia election interference case that we have not yet  
25 received an application for. And we also haven't seen an

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1 application yet for debtor's counsel.

2 So that's at least four sets of lawyers that we're  
3 been exchanging communications with debtor's counsel regarding,  
4 inquiring regarding the applications, status of funding,  
5 appropriate disclosures, affidavits, and so forth. And we  
6 wanted to give the Court and also the parties present comfort  
7 that the U.S. government is paying attention to that issue very  
8 acutely and has been requesting that information from the  
9 beginning of the case.

10 And also to let the Court know that it sounds like an  
11 appropriate and a good procedure to circulate an order because  
12 I think that the lawyers that are actually proposed to  
13 represent Mr. Giuliani in that DC district litigation have an  
14 opportunity to look at that order because based on the  
15 recitation today on what has to happen in that court and what  
16 the deadlines are, I'm not so certain that everything is a  
17 hundred percent accurate that was represented today. It may  
18 be --

19 THE COURT: Well, just two thoughts on that. One is  
20 if somebody stands up and makes a representation here, I assume  
21 it's accurate. And if it's not, then people need to get take  
22 appropriate steps immediately to straighten that out. I do,  
23 however -- I do, however, agree that they need to see the order  
24 because exactly what relief is asked for in trial court as a  
25 trial -- as the person in the trial court representing the



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1 party, they have to be totally on board. There can't be any  
2 daylight, or we're going to end up spending our lives going  
3 back and forth and having lots of conversations here. While  
4 I'm always willing to talk to the parties, I'm aware of the  
5 litigation burn problem. We can't have this be unclear --

6 MS. SCHWARTZ: Right.

7 THE COURT: -- in a way that will cause further  
8 expense and inefficiency. So yes, so I understand that --

9 MS. SCHWARTZ: And that's what I meant by that, Judge.

10 THE COURT: -- that order will be circulated, the  
11 proposed order will be circulated, and there's time to do that  
12 because we're not going to enter the order until after we have  
13 some clarity about the source of funds.

14 MR. FISCHOFF: That's right.

15 MS. SCHWARTZ: And that's what I meant by that, Judge,  
16 not that there was any intent on my part by saying that someone  
17 was misleading the Court but rather, that in speaking with the  
18 counsel that's actually litigating that, he was unaware there  
19 was even retention --

20 THE COURT: Yeah. No, I got it. We're making the bed  
21 that they have to lie in. So I get it.

22 MS. SCHWARTZ: Okay. Good. So that's important for  
23 the Court to know.

24 Also, with respect to the appointment of the creditors  
25 committee, just so that the record is clear, that committee was

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1 solicited on the filing date, that's, I think, December 21st of  
2 the top twenty creditors, and the U.S. Trustee solicited  
3 interest from those creditors and appointed that committee last  
4 week. And given the fact that counsel was just retained by  
5 that committee, the U.S. Trustee waited for counsel to be  
6 retained in order to set the date for the 341 meeting of  
7 creditors, which we are now discussing and socializing a date  
8 for that. So I just wanted the Court to be aware of that.

9 And thirdly, that the debtor had filed a request for  
10 an extension of time to file its schedules. And as the Court  
11 knows, that's a pretty perfunctory motion that gets filed  
12 seeking an extension, usually for an additional fifteen days,  
13 to give the debtor a total of thirty days to file his schedules  
14 of assets and statement of financial affairs. He's a little  
15 bit past that at this point, but we have been in discussions  
16 with counsel for the debtor and are advised that that is well  
17 underway. And we expect that those schedules and the statement  
18 of financial affairs will be filed not later than January 22nd.  
19 And Mr. Fischhoff is in the courtroom, so he can advise the  
20 Court with respect to that but --

21 THE COURT: All right. Well, let's take just a quick  
22 interruption to confirm that with debtor's counsel.

23 MR. FISCHOFF: Yeah. We've been in touch -- I spoke  
24 to U.S. Trustee yesterday, and we talked about a lot of these  
25 issues, although we've talked about the retentions numerous

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1 times over the past week. And those are being worked on. We  
2 need a lot of information from third parties.

3 But putting that aside, I was in communication with  
4 Mr. Giuliani, and we are scheduling an appointment. As I  
5 explained to U.S. Trustee, he needs to be in our office in  
6 person to execute those schedules. And so we're working on a  
7 date of 24th or 25th. Hasn't been finalized. So I would say  
8 the end of next week. I'm not sure what day the 24th or 25th  
9 is. But we hope to have those completed and executed next  
10 week.

11 I also spoke to her about the date for the 341  
12 meeting. We have two dates under consideration, and we'll make  
13 one of those dates work to the convenience of the U.S. Trustee.

14 So we're working on all the administrative issues, and  
15 we hope to have them all in order shortly.

16 THE COURT: All right. Thank you.

17 Ms. Schwartz, anything else from your office?

18 MS. SCHWARTZ: Well, I think that's -- I think that's  
19 it, Your Honor. We just wanted to let you know that all of  
20 those important bankruptcy processes are all underway, and  
21 we're working diligently to ascertain that information from the  
22 debtor and make sure that the filings reflect that.

23 THE COURT: All right. Thank you very much.

24 So I think I've heard from -- well, let me ask if  
25 there's anybody else who wishes to be heard here today.

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1 MR. SAMUELS: Your Honor, Joel Samuels of the  
2 Buchalter firm. I am speaking back to Mr. Giuliani's motion  
3 for relief from the stay but with respect to something that is  
4 not on calendar today but that did have a notice of presentment  
5 process with a deadline of today.

6 THE COURT: Right. So I'm glad you mentioned that.  
7 It was on my list of things to address. My rule  
8 specifically -- my chambers rules specifically make it clear  
9 that you cannot seek to lift the stay by putting something on a  
10 notice of presentment. And in fact, there was an objection  
11 that was filed. And so I assume that the parties will reach  
12 out and get a hearing date for my courtroom deputy. And what I  
13 would say is that there then should be a notice of that hearing  
14 date and also an appropriate date in that notice for any other  
15 party who might want to file an opposition, just so we have it  
16 all teed up properly.

17 MR. SAMUELS: That's fine, Your Honor. The only thing  
18 I want to make clear is the notice of presentment did say a  
19 status (audio interference) first. I think that's unnecessary.  
20 I think we should do as Your Honor suggested, which is get a  
21 hearing date for a motion, get an objection deadline with a  
22 briefing schedule, whatever, not dilly dally, delay, and get  
23 this thing resolved.

24 THE COURT: All right. Well, again, it's now got to  
25 be set for a hearing. What my view is on status conference is

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1 anybody who spent any time in this court, I'm always happy to  
2 have status conferences if they can be helpful for a case. At  
3 the same time, it's not a substitute for people talking to each  
4 other. So I always require that people talk to each other  
5 first. And if everybody agrees a status conference will be  
6 helpful, then you call chambers and say everybody agrees the  
7 status conference would be helpful and who's a party to this  
8 issue in dispute, and then we'll get you on the calendar  
9 quickly, if that shoe fits, I guess.

10 MS. SCHWARTZ: Judge, I'll just note for you that  
11 there is the initial case conference scheduled for January 31st  
12 in this case.

13 THE COURT: Right. That is correct. And so as we do  
14 at status conferences, we'll talk about the status of the case  
15 and anything else that should be addressed in the interest of  
16 moving the case forward and efficiency. And as folks who may  
17 or may not have appeared in front of me before, I like status  
18 conferences because they give a chance for people to raise  
19 issues and in a way that sometimes we can work through without  
20 the need for filing motions or having contested matters.  
21 Sometimes, it works. Sometimes, it doesn't. But it's always  
22 worth the effort.

23 All right. Counsel, anything else that you wanted to  
24 raise?

25 MS. STRICKLAND: Your Honor, in light --

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1 THE COURT: Well, let me just make sure I'm --

2 MS. STRICKLAND: Sorry.

3 THE COURT: That's all right. Let me just make sure  
4 everybody else on Zoom that I've heard from.

5 And I apologize, I don't have your name handy. It's  
6 just showing up as "Joel's iPhone", but I want to make sure  
7 counsel who's on Joel's iPhone was finished with his comments.

8 MR. SAMUELS: Yes. Joel Samuels. I apologize for  
9 that.

10 THE COURT: No, no. That's all right. I apologize  
11 for not having your name handy. No worries. Zoom hearings are  
12 not an exact science, so it's perfectly fine. But I wanted to  
13 make sure I didn't cut you off. Anything else that you wanted  
14 to mention, Counsel?

15 MR. SAMUELS: No. We will reach out to the moving  
16 party on that, and we'll see if we can put together a process  
17 that make senses.

18 THE COURT: All right. And thank you for bringing  
19 up -- it was on the list of things to address in good order, so  
20 I appreciate you mentioning that.

21 Anybody else who's on Zoom who wishes to be heard who  
22 has not yet chimed in on today's matters?

23 All right. Hearing nothing, Ms. Strickland, I think  
24 you wanted to chime in.

25 MS. STRICKLAND: Yes, Your Honor. Your remarks about

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1 people saying things in a status conference to avoid pleadings  
2 triggered one other thought, which is that these cases were  
3 filed on December 21st. And on January 5th, Mr. Giuliani went  
4 on Twitter TV and repeated statements that have already been  
5 deemed actionable about Ms. Freeman and Ms. Moss on Twitter TV.  
6 If that continues, we will be before you lickety-split with a  
7 request for an injunction. So just wanted to flag that the  
8 behavior --

9 THE COURT: No, that's a fair --

10 MS. STRICKLAND: -- continues.

11 THE COURT: That's a fair point. And there was a -- I  
12 made a comment earlier that may have been too nuanced to sort  
13 of understand my motivation. I mentioned that there's always a  
14 concern about lifting the stay to spend time and effort and  
15 money on litigating issues that have already been litigated.  
16 That's a very clinical way, I guess, of saying that I don't  
17 expect that any motions filed in the district court will --  
18 obviously, the district court is more than capable of policing  
19 this, but as a bankruptcy court, all the constituents here have  
20 an interest in making sure that we don't confront that problem  
21 for purposes of this case.

22 And so I certainly would ask debtor's bankruptcy  
23 counsel to make that clear to folks, that while the district  
24 court, again, is more than capable of policing its docket and  
25 the actions of parties in cases, the bankruptcy court and all

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1 the interested parties here also have a vested interest. So  
2 that concern raised by Ms. Strickland is a real one. And I  
3 think everybody in any court that's involved here will take it  
4 very, very seriously. So I want to make sure that message is  
5 received.

6 MR. FISCHOFF: So noted, Your Honor.

7 THE COURT: All right. Thank you.

8 So as to the current motion, let me give some comments  
9 just to sort of sum up. So the debtor sought to lift the  
10 automatic stay at ECF number 25 because it wants to file a  
11 motion for a new trial or to modify the judgment in the Freeman  
12 litigation in district court and if necessary, file a notice or  
13 notices of appeal in that same case that's pending in the U.S.  
14 District Court for the District of Columbia.

15 The debtor contends that he satisfied the requirements  
16 for lifting the stay under Section 362(d) of the Bankruptcy  
17 Code and applicable case law, and that is stay for cause, and  
18 it is memorialized -- the standard for that is memorialized in  
19 the twelve-factor test set forth by the Second Circuit in the  
20 Sonnax Industries case, 907 F.2d 1280, 1285 (2d Cir. 1990).

21 The motion is opposed by the plaintiffs in that case,  
22 that is Freeman the plaintiffs. See ECF number 50, who filed  
23 an extensive opposition. It's also opposed by the official  
24 committee of unsecured creditors at ECF number 56.

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1           We've heard extensively from the debtors, from the  
2     Freeman plaintiffs, and from the committee here today on the  
3     motion. So a couple of observations and just to recap what the  
4     court's direction will be, first, the debtor's motion is very  
5     pro forma. It's really only five pages, with the signature  
6     line on page 6.

7           Beyond listing the twelve Sonnax factors, it actually  
8     contains less than one page of actual analysis, and it really  
9     doesn't apply the Sonnax factors to the actual facts here. And  
10    that alone provides a basis for denial of the motion. See  
11    Barcelona Capital, LLC v. NENO Cab Corporation, 648 B.R. 578,  
12    591 through 92, an Eastern District case from 2023.

13          And it's striking how minimal an effort was made on  
14    the motion, given the request was made on an emergency basis,  
15    with the debtor seeking to shorten the time normally required  
16    for a hearing on such request. And this minimal effort was  
17    also surprising, given the underlying background here, as  
18    debtor would have to know this effort, this request to lift the  
19    automatic stay to continue the Freeman litigation, would be met  
20    with great scrutiny by the Freeman plaintiffs and other  
21    creditors.

22          And in fact, as has come to pass, folks in fact did  
23    file vigorous opposition. The two oppositions lay out the  
24    concerns of the Freeman plaintiffs and the committee of  
25    unsecured creditors in extensive detail and among the concerns

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1 identified that we've touched on here today include whether  
2 debtor is attempting to use inappropriately the automatic stay  
3 as both a sword and a shield, which is something that the case  
4 law makes clear is of concern. See *In re: Residential Capital,*  
5 *LLC*, 2012 WL 3249641, a bankruptcy case from August 7th, 2012.

6 Another issue that's been identified is the spending  
7 of more money on the Freeman litigation. Given the debtor's  
8 prior conduct in the case, the objectors are skeptical about  
9 the debtor's intentions in the Freeman litigation, given the  
10 debtor's lack of participation in the case has previously led  
11 to the entry of judgment. And I'm not going to try to  
12 characterize that. It's all memorialized in the district  
13 court's orders and decisions and statements on the record.

14 So in light of all that, the objectors wonder whether  
15 the only purpose now is to further delay. So the Court notes  
16 that there is case law making clear that lifting the automatic  
17 stay is inappropriate to relitigate matters already  
18 adjudicated. See *In re: Ditech Holdings Corporation*, 2012  
19 *Bankr. LEXIS 3220* (S.D.N.Y. Nov. 14, 2022). That, of course,  
20 is not the same, as you do have rights to seek a new trial.  
21 You have rights on appeal. But I mentioned this comment,  
22 particularly in light of the concerns raised by Ms. Strickland  
23 now, about statements that have been made and may continue to  
24 be made and the concerns that would raise.

25 A third concern identified by the objecting parties is

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1 the notion of spending limited estate funds on the district  
2 court case involving Ms. Freeman, where in the objectors view  
3 that the judgment debt in the Freeman case is nondischargeable  
4 under the Bankruptcy Code. And that's always an issue or often  
5 can be an issue in bankruptcy cases where there's a judgment,  
6 but it's particularly acute here, given the record that is the  
7 debtor's agreement in a stipulation the Freeman case that the  
8 debtor's conduct was intentional, malicious, wanton, and  
9 willful. And so see Pagones v. Mason, 1999 Bankr. LEXIS 90,  
10 which notes that an intentional tort of defamation may  
11 constitute willful and malicious injury under Section 523(a)(6)  
12 of the Bankruptcy Code if the debtor knew the published  
13 statements were false.

14 And obviously, this all raises the related issue about  
15 the debtor's application to retain special counsel. That  
16 application, as I understand it, represents that all legal fees  
17 will be paid by outside sources, but it does not disavow a  
18 right to be paid from estate funds. That issue will bear  
19 further watching.

20 A fourth issue that was raised by the objectors is the  
21 debtor seeking to use the stay as a substitute for an appeal  
22 bond, with the concern once again driven by the debtor's  
23 conduct in the Freeman litigation and the argument that that  
24 changes the normal calculus. The case law is split, actually,  
25 on the issue sort of in a more generic question of whether the

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1 stay in a bankruptcy is appropriate, where to avoid the need to  
2 post a bond in the underlying litigation. And that split is  
3 set forth in cases like In re: Holm, H-O-L-M, 75 B.R. 86  
4 (Bankr. N.D. Cal. 1987).

5 Finally, the fifth sort of general argument that I see  
6 in the objections is the committee arguing that lifting the  
7 stay could create disparate treatment of one creditor over  
8 another.

9 So in looking at the request to the applicable Sonnax  
10 factors, it is clear there are considerable problems. I'm not  
11 going to restate these concerns using the Sonnax factors.  
12 Those are all laid out in the objectors' papers. That is, the  
13 Freeman plaintiffs and the UCC. But in the end, dealing with  
14 all these concerns today is impossible, and that's only  
15 heightened by the fact that the opposition came in about  
16 twenty-four hours ago.

17 So where we are is as follows. The judgment  
18 plaintiffs in both their papers and as refined here today have  
19 made it clear that they don't -- that is, the Freeman  
20 plaintiffs, excuse me, do not oppose the lifting of the stay  
21 for the debtor to file a post-trial motion dealing with damages  
22 and to file a notice of appeal if the court acts on that, but  
23 to take no further step on appeal.

24 And this is all relevant because this does give me a  
25 basis to grant some relief because it's agreed to -- the same

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1 approach has been agreed to by the committee, and no other  
2 party has been heard to oppose it. This is all contingent upon  
3 verifying that no estate funds will be used in connection with  
4 the Freeman litigation and these additional steps.

5 It also will be the subject of some noodling of  
6 language to make it clear that the district court has the  
7 discretion to treat that any motions filed in a way that the  
8 district court deems is appropriate and that as a bankruptcy  
9 nothing about what the district court wants to do really  
10 implicate the bankruptcy concerns. And parties are free to  
11 make their arguments in district court about what they think is  
12 the appropriate way to handle it. But I, as a bankruptcy  
13 judge, am not ordering anything one way or the other to explain  
14 how I think the district court should handle that motion.

15 And so given that agreement, I agree that it is  
16 appropriate to lift the stay along those lines. Parties will  
17 work on a proposed order that does so. And in the meantime,  
18 the parties will work on then submitting that to the Court. If  
19 there are issues, we can have a conference to talk about it and  
20 try to work our way through it. But in the meantime, before  
21 there are submitted, there will be hopefully some progress made  
22 on the retention issues, as well as the source of the funds and  
23 the Lar Dan affidavit and all that goes with it.

24 And today is the first step in what may be further  
25 discussions about what should happen in the Freeman litigation.

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1 Everybody reserves their rights. I certainly, after today's  
2 conversation, have a pretty good idea of where people stand.  
3 But we'll take this one step at a time. I know that makes it  
4 complicated, and it does necessitate that people come back to  
5 this Court, which I know is not necessarily the most efficient  
6 way to do it or the least expensive way to do it, but it seems  
7 to be the most just way to do it.

8 And so I -- and speaking about status conferences, I'm  
9 happy to use those as a way to chat with folks about where the  
10 Freeman litigation stands and to discuss future steps so we can  
11 avoid unnecessary litigation and contested issues here in this  
12 court. The only thing I would say is I don't want to have  
13 those conversations without all the parties who are here today  
14 present because that would set us backwards, as opposed to  
15 forward.

16 So if one of the parties wants to raise that issue  
17 here in a status conference and say, Judge, in light of the  
18 Freeman litigation, here's what we think should happen, and  
19 this is a new development or a new thinking on our part, you  
20 need to socialize that with all the interested parties, and  
21 then we can have a conversation. But surprise is a bad thing  
22 in litigation pretty much always, cross-examination being the  
23 notable exception. But for things like this, surprise is a bad  
24 idea, and I want to avoid surprise. So please talk to each  
25 other first.

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1 But again, I'm happy to make myself available as  
2 needed to chat with the parties and try to find the most  
3 efficient way forward in these cases, whatever that looks like.  
4 I do appreciate that parties have laid out -- I think every  
5 party who's here today, in court, the debtor, the committee,  
6 the Freeman plaintiffs, the U.S. Trustee's office, every party  
7 that's been actively involved today has sort of laid out a road  
8 map or another about what should happen in the case going  
9 forward. And I fully anticipate seeing pleadings and further  
10 things in the future that reflect their views.

11 If anyone needs to chat about any of that, again, I'm  
12 happy to make myself available. But with that, that's my  
13 ruling that I think sort of memorializes our ongoing discussion  
14 here today. I do appreciate counsel's willingness to have that  
15 kind of a dialog to reach a just result and navigate the many  
16 shoals that are involved in this particular dispute.

17 So with that, let me circle the virtual room. See if  
18 anything else needs to be addressed here today.

19 Anything else from the debtor?

20 MR. FISCHOFF: No, Your Honor. We appreciate Your  
21 Honor's help in working this out today. Thank you very much.

22 THE COURT: All right. Thank you.

23 Anything else from the Freeman plaintiffs?

24 MS. STRICKLAND: No, Your Honor. We will work on the  
25 language. We assume that no order will be entered until the

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1 retention issue is nailed down and memorialized by court order.

2 THE COURT: Correct.

3 MS. STRICKLAND: Thank you, Your Honor.

4 THE COURT: Correct. And so as you know, proposed  
5 orders are emailed to chambers. And in this instance, if  
6 everyone agrees upon the order, the proposed order would be  
7 emailed to make sure to copy everybody else of interest, so  
8 everybody knows it's being conveyed, with a notation that this  
9 order is agreed to, and also with some representation about the  
10 status of the funds issues so that I know it's appropriate to  
11 enter the order, meaning that people have gotten to a point  
12 where they understand estate funds won't be used and that's  
13 been confirmed, that everybody's on the same page with that.  
14 If it's helpful to get together to chat about that, we can do  
15 that. But again, I don't want to prematurely enter an order  
16 until the issues we've talked about today are run to ground.

17 MS. STRICKLAND: Your Honor, I was thinking that the  
18 order on this motion would be after the order on the retention,  
19 once the disclosure's been formally made, rather than relying  
20 on representation.

21 THE COURT: I think that's fine. I'm open to  
22 suggestion. That would seem to guarantee that there won't be  
23 any sort of miscommunication anywhere. So I'm happy to do it  
24 that way. I'll just put in the caveat that if everybody agrees  
25 that the issues are somehow already resolved but you're going



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1 to give me both orders at the same -- whatever it is, if you  
2 all are on the same page that it's appropriate to move forward  
3 with the order, it's agreed upon, I'm happy to do that. Again,  
4 just make sure to communicate that to me in a way that is  
5 unambiguous and includes all folks who are parties-in-interest.

6 MR. FISCHOFF: Agreed.

7 THE COURT: All right.

8 MS. SCHWARTZ: Your Honor, just for clarification --

9 THE COURT: Anything else from the committee?

10 MS. QURESHI: Nothing more from the committee, Your  
11 Honor. Thank you.

12 THE COURT: All right. Anything else from the UST?

13 MS. SCHWARTZ: Thank you, Your Honor. Just for  
14 clarification, I think that we're talking only about the one  
15 retention. That is for the law firm that's proposed to handle  
16 the Freeman litigation. As I mentioned earlier, there are  
17 numerous retention applications that have been contemplated or  
18 filed.

19 THE COURT: Thank you for that clarification. I think  
20 that's right. As to other retentions, everybody reserves all  
21 rights that they have under applicable law. Again, I think  
22 it's important for debtor's counsel to socialize that so that  
23 people are in the know because those conversations will be more  
24 efficient than having court hearings and things that people are  
25 surprised, obviously, to the extent we're talking about

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1 litigation elsewhere, to implicate some of the concerns we've  
2 been talking about today. And so I trust parties will have  
3 communications, the U.S. Trustee's office, the committee, the  
4 Freeman plaintiffs, to keep on top of what's going on and then  
5 figure out where to go from there. But thank you for the  
6 clarification, Ms. Schwartz.

7 All right. With that --

8 MS. SCHWARTZ: Thank you, Your Honor.

9 THE COURT: -- thank you very much. I appreciate  
10 everybody's thoughts here today and look forward to seeing you  
11 at the end of the month at the first status conference, which  
12 isn't quite the first status conference. But thank you very  
13 much.

14 IN UNISON: Thank you, Your Honor.

15 (Whereupon these proceedings were concluded at 1:02 PM)  
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I N D E X

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subject to modifications, as noted on		
the record		

C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true  
and accurate record of the proceedings.



River Wolfe (CDLT-265)

TTA-Certified Digital Legal Transcriber

eScribers

7227 North 16th Street, Suite #207

Phoenix, AZ 85020

Date: January 21, 2024

January 19, 2024

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